



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 25, 1998

Mr. Robert J. Gervais
Assistant City Attorney
City of Galveston
City Attorney's Office
P.O. Box 779
Galveston, Texas 77553-0779

OR98-2018

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117505.

The City of Galveston (the "city") received a request for documents pertaining to the filing for a final plat and the notification to adjacent property owners of proposed development. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents you have submitted.

Section 552.103(a) of the Government Code, the "litigation exception," excepts from disclosure information relating to litigation to which the state or a political subdivision is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under section 552.103(a).

In this instance, you explain that the city is currently involved in pending litigation, *Stewart Thompson v. City of Galveston*, No. 98 CV 0063 (10th Dist. Ct., Galveston County, Tex., Jan. 23, 1998). You have provided this office with a copy of the Application for Writ of Certiorari filed in that case. You have submitted a list of the people notified as well as

printouts from an electronic record with identifying information for each of these individuals. We conclude that litigation is pending and that the submitted information relates to the litigation. Thus, the city may withhold this portion of the requested information under Government Code section 552.103.

Generally, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

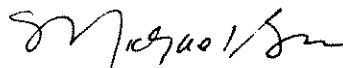
You did not provide a copy of the requested "application as filed for a final plat on section 1." This information appears to be a public record filed pursuant to law, ordinance or regulation and presumably is the property of the county clerk. As such it is subject to Section 191.006 of the Local Government Code, which states:

All records belonging to the office of the county clerk to which access is not otherwise restricted by law or by court order shall be open to the public at all reasonable times. A member of the public may make a copy of any of the records

Further, our office has consistently held that where compelling public policy based on constitutional considerations or law outside the Open Records Act requires public access to information, its relationship to litigation cannot justify withholding it. ORD 551. It is our opinion that these considerations apply to the requested application and therefore that information must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



Michael Jay Burns
Assistant Attorney General
Open Records Division

MJB/ch

Ref.: ID# 117505

Enclosures: Submitted documents

cc: Mr. E.J. Smutny
1701 Maryland
Houston, Texas 77006
(w/o enclosures)